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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,023	11/19/2003	Thomas P. Branch	45011-271086	3205
826	7590	09/08/2005	EXAMINER	
ALSTON & BIRD LLP			DOSTER GREENE, DINNATIA JO	
BANK OF AMERICA PLAZA				
101 SOUTH TRYON STREET, SUITE 4000			ART UNIT	PAPER NUMBER
CHARLOTTE, NC 28280-4000			3743	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/720,023	BRANCH, THOMAS P.	
	Examiner	Art Unit	
	Dinnatia Doster-Greene	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 June 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-16 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 5-16 is/are allowed.

6) Claim(s) 2-4 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: Final Rejection.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement submitted on June 2, 2005 has been considered and entered.

Drawings

The drawing objection has been withdrawn.

Claim Objections

The objection to claim 5 has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamont (U.S. Patent No. 5,453,082) in view of Gleason (U.S. Patent No. 2,543,248). Lamont discloses a medical boot 10 which includes an inflatable member 86 positioned

beneath a user's foot proximate the toes and insole 37 such that alternate plantarflexion and dorsiflexion of the foot is provided (Lamont, col. 4, lines 23-66). Although Lamont does not specifically discloses an inflatable member positioned above the user's foot proximate the toes, Lamont does teach that an additional inflatable member 32 can be used in other locations within the medical boot (Lamont, Fig. 4 and col. 4, line 67-col. 5, line 2). Furthermore, Gleason which also relates to a device for stimulating a limb of a user by inflating and deflating an inflatable member (diaphragm 32) teaches that it is known in the art to position inflatable members on both the top and the both of a user's limb (Gleason, Figs. 5-6 and cols. 1-3). Thus, it would have been obvious to one skilled in the art at the time of the invention to modify the medical boot of Lamont based upon the teaching of Gleason to include an inflatable member and a second flap positioned above the user's foot wherein the second flap is positioned between the inflatable member and the user's foot for the purpose of providing more effective plantarflexion and dorsiflexion of the user's foot.

Double Patenting

In view of Applicant's submission of a Terminal Disclaimer, the nonstatutory double patenting rejection has been withdrawn.

Conclusion

Allowable Subject Matter

Claims 5-16 are allowed.

Conclusion

Applicant's arguments have been considered but are deemed non-persuasive.

Therefore, claims 2-4 remains rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg

Henry Bennett
Supervisory Patent Examiner
Group 3700